

**IN THE COURT OF APPEALS  
FIRST APPELLATE DISTRICT OF OHIO  
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NO. C-110041
		TRIAL NO. B-1004977
Plaintiff-Appellee,	:	
		<i>JUDGMENT ENTRY.</i>
vs.	:	
KEVIN GARR,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. See S.Ct.R.Rep.Op. 3(A); App.R. 11.1(E); Loc.R. 11.1.1.

Cincinnati police officers approached a group of men who appeared to be having an argument. One of the men was defendant-appellant Kevin Garr. When the men saw the police, Garr and another man began to walk away. The third man, Gerald Buchanon, yelled to the police that Garr had a gun, that it was in a bag, and that he had been robbed. When police approached Garr, he fled with a plastic bag in his hand. While running away, Garr threw the bag into an empty lot. After apprehending Garr, the police recovered the bag and the gun inside it.

Buchanon did not testify at the subsequent trial. Garr was acquitted of robbery, but he was convicted of having a weapon while under disability, carrying a concealed weapon, and tampering with evidence. He was sentenced accordingly. Garr now appeals, raising six assignments of error.

In his first assignment of error, Garr argues that the Confrontation Clause was violated when the officer testified that Buchanon had said that Garr had a gun in the bag. He also argues that the statement was hearsay, and that no exception applied to allow the testimony. But the officer did not testify to what Buchanon had said in order to prove that there was a gun in the bag. The police found the bag with the gun

inside it. The officer testified to what Buchanon had said to explain why he had focused his attention on Garr and had initiated the pursuit. “[W]here statements are offered to explain an officer's conduct while investigating a crime, such statements are not hearsay.” *State v. Blevins* (1987), 36 Ohio App.3d 147, 149, 521 N.E.2d 1105, citing *State v. Thomas* (1980), 61 Ohio St.2d 223, 232, 400 N.E.2d 401. We overrule Garr’s first assignment of error.

In his second and third assignments of error, Garr claims that his convictions were based upon insufficient evidence and were against the manifest weight of the evidence. Garr’s arguments notwithstanding, Buchanon’s testimony was not necessary to prove the charges for which Garr was convicted. Garr had had a gun, he had been under a disability, and he had thrown the gun away after the police had initiated their pursuit. The credibility of witnesses is for the jury to decide. *State v. Bryan*, 101 Ohio St.3d 272, 2004-Ohio-971, 804 N.E.2d 433, ¶116. In light of the fact that the jury found in favor of Garr on the robbery charges, the jurors clearly analyzed the testimony carefully and did not lose their way. We overrule Garr’s second and third assignments of error.

In his fourth assignment of error, Garr claims that he could not be convicted of having a weapon while under disability and carrying a concealed weapon because those two offenses are allied offenses of similar import. We agree with the Second Appellate District in rejecting this argument. *State v. Young*, 2nd Dist. No. 23642, 2011-Ohio-747. As the *Young* court stated, “[the defendant], a person under disability, necessarily acquired a handgun sometime before concealing it on his person. Thus, the elements of proof for having a weapon while under disability were satisfied when [he] acquired the firearm. His subsequent conduct of concealing the handgun constituted a separate and distinct act from initially acquiring the weapon.” *Id.* at ¶48-49. We overrule Garr’s fourth assignment of error.

In his fifth assignment of error, Garr claims that his trial counsel was ineffective in stipulating to his disability and in failing to call character witnesses at the sentencing hearing. Stipulating to a prior conviction is not ineffective assistance, as it prevents the state from overemphasizing the prior conviction by avoiding the introduction of evidence about it. See, e.g., *State v. Deal*, 8th Dist. No. 92642, 2010-Ohio-153, ¶20, citing *State v. Blackburn*, 11th Dist. No. 2001-T-0052, 2003-Ohio-605. As for the lack of character witnesses, this is within the realm of trial strategy, as Garr cannot show on this record that if such witnesses would have testified the outcome would have been different. Debatable trial tactics do not constitute a denial of effective assistance of counsel. *State v. Clayton* (1980), 62 Ohio St.2d 45, 49, 402 N.E.2d 1189, certiorari denied (1980), 449 U.S. 879, 101 S.Ct. 227. We overrule Garr's fifth assignment of error.

In his final assignment of error, Garr argues that the effect of the above errors, even if they alone would not require reversal, cumulate in such a way that the result is an unfair trial. Since Garr has failed to establish that multiple errors occurred, he cannot invoke the cumulative error doctrine. *State v. Johnson*, 1st Dist. Nos. C-0801195, C-0801196, 2009-Ohio-6800, ¶80. His final assignment of error is overruled.

Having overruled all assignments of error, we affirm the judgment of the trial court.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

**DINKELACKER, P.J., SUNDERMANN and FISCHER, JJ.**

To the Clerk:

Enter upon the Journal of the Court on November 23, 2011

per order of the Court \_\_\_\_\_.  
Presiding Judge